vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.6291 OF 1997**

Samajik Sanskritik Congress,
Maharashtra (Mumbai) Shakha
Alegaon & Anr. ... Petitioners

V/s.

1. Shri Sukhdeo Bapu Pawar & Ors. ... Respondents

Mr.S.G. Kudle for Petitioners
Mr.M.A. Patil for Respondent No.1
Mr.S.K. Chinchalikar, AGP, for Respondent No.2

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 19, 2007**

**ORAL JUDGMENT:**

. This petition challenges the order of the School Tribunal whereby the Respondent No.1 has been directed to be reinstated in service with continuity and full backwages. It appears that the Petitioners had appointed Respondent No.1 as a peon. A memo was issued to respondent No.1 on 19.4.1996 seeking an explanation as to why he had left the place of duty on 18.4.1996 without any prior intimation. It is the case of the petitioners that Respondent No.1 instead of replying to the memo issued a letter on 28.4.1996 contending that the petitioners had stopped him from signing the muster roll from 19.4.1996. He, therefore, contended in his letter that the question of submitting any explanation to the memo of 18.4.1996 did not arise. The management

then called upon Respondent No.1 to report for duty. On 31.5.1996, another letter was written by the petitioners to the respondent requesting him to resume duty. It appears however that Respondent No.1 instead of resuming duties after the letter dated 31.5.1996 remained absent, according to the petitioners.

2. Respondent No.1 then filed Appeal No.94 of 1996 before the School Tribunal contending that his services had been illegally terminated on and from 20.4.1996. The petitioners in their written statement stated that they have not terminated the services of Respondent No.1 and in fact it was he who had stayed away from work after 19.4.1996. The petitioners also pleaded that Respondent No.1 had not submitted his explanation when issued a memo on 18.4.1996 and that he had remained absent ever since that date without any cause.

3. On the basis of the pleadings and evidence before it, the Tribunal has concluded that the petitioners had wrongly terminated the services of Respondent No.1. The Tribunal found that since the petitioners were willing to allow the respondent to join duty, the respondent was directed to remain present on duty from 17.7.1996 when he was reinstated in service. In these circumstances, the Tribunal has concluded that although there was no specific order of termination

passed by the petitioners, Respondent No.1 was not permitted to resume duty and instead the petitioners had entered into correspondence with him. The tribunal held that the action of the Petitioners amounted to "otherwise terminating" the Respondent No.1 from service.

4. Admittedly, the petitioners have reinstated Respondent No.1 before the petition was admitted. The question, therefore, which remains is whether the petitioners should be directed to pay backwages to the Respondent.

5. Mr.Kudle, appearing for the petitioners, submits that the Tribunal has erred in awarding backwages to the respondent when the respondent had breached discipline at the workplace. He submits that the person who does not reply to memos issued by the management or give any explanation for his absence, should not be rewarded by payment of backwages to him. According to the learned advocate, the petitioner had called upon the respondent time and again to report for duty. He drew my attention to the letter of 31.5.1996 in which the petitioners have stated that the respondent was being offered given one more opportunity to resume duty as usual in the school and to sign the muster roll, although they had not found his conduct or explanation submitted through letter

dated 25.4.1996, satisfactory. The learned advocate submits that a person who was not responsible enough to join duties once he has been directed to do so by the petitioners ought not to be rewarded full backwages.

6. On the other hand, Mr.Patil, appearing for the Respondent No.1, submits that the Tribunal has found that there was a termination of service and it therefore held that the petitioners ought to pay to the respondent full backwages. He points out that the Tribunal has not accepted the contentions of the petitioner that Respondent No.1 was not willing to report for duty. It has instead held that the petitioners had terminated the services of the respondent on and from 20.4.1996 by disallowing him to sign the muster roll. The learned advocate submits that once the Tribunal has granted reinstatement, the consequential order of backwages must follow.

7. Having heard the learned advocates for both parties, I am of the view that the findings of the Tribunal that the respondent’s services were otherwise terminated appear to be correct and therefore, the order granting reinstatement must be upheld. In my opinion, there is no need to interfere with the findings of fact arrived at by the Tribunal. If indeed the petitioners were aggrieved by the conduct of the respondent in not

submitting any explanation to the memos issued by them, it was always open for the petitioners to hold an enquiry against him. However, by letter dated 31.5.1996, the petitioners had given an opportunity to the respondent to join duty. The Respondent No.1 chose not to avail of the opportunity. There is no pleading as to whether the respondent was gainfully employed elsewhere till he was reinstaed by the Petitioners. These facts have not been taken into consideration by the Tribunal while awarding backwages.

8. In my opinion, therefore, the order for backwages must be set aside. However, the Respondent No.1 is entitled to continuity of service on his reinstatement. Rule partly made absolute accordingly. No order as to costs.